IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

ST.Rev..No. 45 of 2004

(ORDER DATED 25-9-2002 IN AITA.No. 25/1996 OF KERALA AGRICULTURAL INCOME TAX AND SALES TAX TRIBUNAL, ADDITIONAL BENCH-I, ERNAKULAM)

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PETITIONER:

THE TRAVANCORE RUBBER & TEA CO.LTD.,
PATTOM PALACE P.O.,
TRIVANDRUM 695 004,
REPRESENTED BY ITS DIRECTOR MR.S.RAMAKRISHNA SARMA

BY ADVS. SRI.JOSEPH MARKOSE
& SRI.THOMAS VELLAPPALLY

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY THE SECRETARY (TAXES),
TRIVANDRUM.

BY SPL.GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 23/10/2007, ALONG WITH S.T.Rev. No. 139 OF 2004, S.T.Rev. No. 192 OF 2004 AND OTC NO. 3 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.No.45 of 2004,
S.T.Rev.No.192 of 2004,
O.T.C.No.3 of 2006 &
S.T.Rev.No.139 of 2004

Dated, this the 23rd day of October, 2007

ORDER

H.L.Dattu, C.J.

The assessee is common in all these revision petitions. The assessee has raised more or less similar questions of law for our consideration and decision in all these revision petitions. Therefore, these revision petitions are clubbed, heard and disposed of by this common order.

(2) The matter arises under the provisions of the Kerala Agricultural Income Tax Act, 1991 ('the Act' for short). The assessment years in question are 1991-92, 1992-93, 1993-94 and 1995-96.

(3) In S.T.Rev.No.45 of 2004, the assessee has framed the following questions of law for our consideration and decision. They are as under:

> "(i) Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in confirming the addition of Rs.7,58,955/- as agricultural income from production waste?
>
> (ii) Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in confirming the assessment of receipts from sale of old and unused consumables of Rs.1,82, 855.00 as agricultural income?
>
> (iii) Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in confirming the disallowance of Head Office General Charges of Rs.57,791.97?
>
> (iv) Whether on the facts and in the circumstances of the case if the amount of Rs.36,79,213/- claimed by the petitioner as provision for bonus was not allowable for assessment year 1991-92 should not the Appellate Tribunal have directed that the same be allowed as a deduction in

assessment year 1992-93?

(4) In S.T.Rev.No.192 of 2004, the assessee has raised only three issues for our consideration and decision. In O.T.C.No.3 of 2006 the assessee has raised only two issues for our decision and in S.T.Rev.No.139 of 2004 the assessee has raised only one issue for our consideration.

(5) For answering the issues that the assessee has raised in all these revision petitions, we intend to refer to the facts in S.T.Rev.No.45 of 2004.

(6) Petitioner is a company incorporated under the provisions of the Companies Act. It owns and manages a rubber estate. It is exigible to tax under the provisions of the Kerala Agricultural Income Tax Act, 1991.

(7) For the assessment year 1991-92 for which the accounting year is 1990-91, the assessee had filed its return of income and in that had claimed certain deductions. The assessing authority after rejecting the return so filed by the assessee, had issued a pre-assessment notice. In the said notice, the assessing authority had noticed that the production waste claimed by the assessee was one of the deductions claimed in the return of income filed. Therefore, had indicated in the pre-assessment notice that such a claim is not allowable under the provisions of the Act. Therefore the assessing authority had indicated to the assessee that he intends to disallow the claim made towards production waste.

(8) After receipt of the pre-assessment notice, the assessee had filed its objections bringing to the notice of the assessing authority that, in fact, in the return of income filed, they had not claimed any deduction for the production waste in the return of the agricultural income and therefore, the

reason for not allowing the claim is improper and illegal. It was also stated that, while converting latex into centrifugal latex, there is certain percentage of waste and that production waste cannot be added back to the return of income filed.

(9) The second issue relates to the sale of old and unused consumables is concerned, the assessing authority had indicated to the assessee, that, in view of the deeming provisions under Section 4(2) of the Act, the sale of the old and unused consumables requires to be added back to the agricultural income declared by the assessee.

(10) In so far as the allowance claimed towards the expenses of the head office, the assessing authority has pointed out in the pre-assessment notice that since details are not forthcoming in the return of income filed, the same cannot be allowed.

(11) In so far as the provision made to claim deduction towards payment of bonus, the assessing authority had indicated in its pre-assessment notice that the same cannot be allowed in view of Explanation II to Section 5 of the Act.

(12) After considering the objections filed to the pre-assessment notice issued, the assessing authority had quantified the tax liability by disallowing some of the deductions claimed by the assessee in the return of income filed. The order passed by the assessing authority is now confirmed by the first appellate authority and also by the Tribunal in the appeals filed by the assessee.

(13) Aggrieved by the orders so passed by the authorities under the Act as well as by the Tribunal, the assessee is before us in these revision petitions for the assessment years 1991-92, 1992-93, 1993-94 and 1995-96. As we

have already noticed, the issues raised in these revision petitions are common except issues (i) and (iii). Issues 2 and 4 are common in all the revision petitions.

(14) Re. Issue No.(i): This issue pertains to the disallowance made by the assessing authority towards the production waste.

The assessee owns and manages a rubber estate. It derives agricultural income from the sale of latex. Before effecting sale of latex, certain impurities and water content is removed by the assessee and it is only then the centrifugal latex is sold in the market. For the assessment year 1991-92, the assessee had claimed 1% of the production of latex as production waste. The assessing authority, the first appellate authority as well as the Tribunal are of the opinion that the assessee had claimed deduction towards the production waste and therefore, are of the opinion that the claim made towards production waste is not allowable under the provisions of the Act and accordingly have disallowed the claim. The conclusion and the reasoning assigned by the assessing authority is not based on any material, nor based on the provisions of the Act. In fact, it was not the claim of the assessee that the production waste requires to be allowed as a permissible deduction while computing the tax payable under the provisions of the Agricultural Income Tax Act. What the assessee had done was they converted latex into centrifugal latex and has effected sale of the same. While the latex is converted into centrifugal latex and in order to transport the centrifugal latex, necessarily it has to remove certain impurities and also the water content. The assessee had indicated that out of the total quantity of the latex produced by them, 1% of the waste requires to be deducted and the balance of it requires to be taken as the

agricultural income for the assessment year in question. Mistaking this stand of the assessee, the assessing authority has proceeded to hold that the Act does not permit for deduction of the production waste. This reasoning of the assessing authority is neither the claim of the assessee nor based on any other material available on the records. In fact, for the next assessment year, namely, 1992-93, the Deputy Commissioner (Appeals) had granted the relief to the assessee in so far as the production waste is concerned. Therefore, in our opinion, the first issue raised and canvassed by the assessee requires to be answered in favour of the assessee and against the revenue. To that extent, the order of assessment passed by the assessing authority for the assessment year 1991-92 requires to be modified.

(15) Re. Issue No.(ii): This issue pertains to the sale of old and unused consumables.

The assessee had claimed deduction of income received from the sale of old and unused consumables. The assessing authority has rejected the same. The order so passed by the assessing authority is confirmed by the first appellate authority as well as by the Tribunal.

In our view, in view of Section 4(2)(ii) of the Act, the receipts from the sale of old and unused consumables require to be treated as agricultural income.

Section 4(2)(ii) of the Act reads as under:

"**4. Total Agricultural Income-**

xxx xxx

(2) The following income shall be deemed to be agricultural income received in the previous year, namely:-

xxx xxx

> (ii) When an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or liability incurred by the assessee; and where the assessee has obtained, either in cash or in any other manner any amount in respect of such loss, expenditure or some benefit in respect of such liability during the previous year the amount obtained by him, or the value of benefit accrued to him;"

Sub-section (2) of Section 4 of the Act deems certain income to be the agricultural income.

In the instant case when the assessee had purchased the consumables claimed it as expenditure towards the agricultural operations and those deductions had been allowed in the previous years. The assessee has sold those consumables and has received certain amounts from the sale of the old and unused consumables. In view of the deeming provision under Section 4 (2)(ii) of the Act, the income so received is exigible to tax under the Act.

(16) Re. issue No.(iii):- The assessing authority has disallowed the claim only on the ground that the assessee had not furnished the details in regard to the expenses of the head office. When the assessee claimed certain deductions, it is expected to produce necessary documents in support of the claim. If such documents are not produced, the assessing authority would be justified in disallowing the claim. This is what has been done by the assessing authority while disallowing the claim towards general charges of the head office. This reasoning and conclusion of the assessing authority is concurred with by the first appellate authority as well as by the Tribunal. This finding of the assessing authority is purely based on facts and therefore, interference with the said finding in revision petitions is not called for. Accordingly, issue No.(iii) requires to be answered against the assessee and in favour of the revenue.

(17) Re. issue No.(iv):- At the outset, we may note that the assessee maintains the mercantile system of accounting. In the books of accounts for the assessment year 1991-92 corresponding to the accounting year 1990-91, the assessee had made a provision towards payment of bonus. The provision so made was claimed as a deduction in the assessment year 1991-92. The said claim is rejected by the assessing authority on the ground that the claim is allowable as deduction if only when it is paid and not when a provision is made for payment of bonus. In the instant case, though a provision had been made by the assessee for payment of bonus, the same was paid by the assessee in the month of September, 1992. The assessing authority keeping in view the Explanation II to Section 5 of the Act, has rejected the deductions so claimed by the assessee, though a provision was made by the assessee for payment of bonus in the accounting year 1990-91 corresponding to the assessment year 1991-92.

(18) Sri.Joseph Markose, learned counsel appearing for the assessee, would contend, that since the assessee had maintained the mercantile system of accounting and when a provision is made for payment of bonus, that requires to be allowed as a deduction while computing the tax liability under the provisions of the Act. In the alternative, learned counsel would submit that since the payment has been made by the assessee in the assessment year 1991-92, the same requires to be taken note of by the assessing authority for the subsequent assessment year, namely 1992-93 treating 1991-92 as the accounting year. In our opinion, none of the submissions canvassed in this regard by the learned counsel for the assessee has any merit and therefore it requires to be rejected. We say so for the following reasons:

(19) Section 3 of the Act is the charging provision under the Act. Section 4 of the Act provides for the total agricultural income. Section 5 of the Act provides for computation of agricultural income. For our purpose we need notice only Explanation II to Section 5 of the Act. The said Explanation reads as under:

> "**Explanation II:**- In the case of any deduction towards gratuity or bonus, the deduction shall be allowed in the year in which actual payment is made to the employee or to any fund recognised in this behalf by the Government irrespective of the method of accounting employed less any deduction already allowed in the previous year or years in respect of the employee. (Gratuity and bonus paid before the due date for the submission of return will be allowed as deduction in the previous year to which the return relates)."

(20) A reading of the provision would make it clear that irrespective of the method of accounting employed by the assessee, in the case of payment of gratuity or bonus, the deductions shall be allowed in the year in which actual payment is made to the employee or to any fund recognised in this behalf by the Government.

(21) In the instant case, the assessee has maintained the mercantile system of accounting and therefore, has made a provision for payment of bonus for the assessment year 1991-92 while filing the return of income. It is only a provision and not actual payment. In fact, the actual payment was made only in the month of September, 1992. Therefore, in view of Explanation II to Section 5 of the Act, in our opinion, the Agricultural Income Tax Officer was justified in rejecting the claim made towards payment of bonus in the assessment year 1991-92.

(22) Learned counsel Sri.Joseph Markose would submit that atleast there should be a direction to the assessing authority to allow the claim made

towards payment of bonus in the assessment year 1991-92 for the assessment year 1992-93. In support of that assertion the learned counsel has brought to our notice a decision of the apex Court in the case of *Chowringhee Sales Bureau P.Ltd.* v. *Commissioner of Income-Tax, West Bengal* [(1973) 87 ITR 542]. We have gone through the said decision. We are of the view that the said decision would not come to the aid of the petitioner in any manner whatsoever.

(23) There is no ambiguity as such in Explanation II to Section 5 of the Act. For a claim for deduction towards payment of gratuity or bonus, irrespective of the method of accounting maintained by the assessee, it is only the actual payment in the relevant accounting year that can be allowed as a deduction.

(24) In the instant case, the assessee for the subsequent assessment years had not claimed the amounts paid by them in the month of September, 1992 as deductions in a subsequent assessment year. If such a claim was not made, we cannot expect the assessing authority to grant the deductions. At this stage we cannot be asking the assessing authority to modify the assessment order though a claim had not been made at the earliest point of time. In that view of the matter, the alternative contention canvassed by the learned counsel for the assessee also cannot be granted by us.

(25) In view of the above discussion, we answer the four issues that the assessee has raised in S.T.Rev.No.45 of 2004 as under:

i) The revision petitions are disposed of.

ii) Issue No.(i) in S.T.Rev.No.45 of 2004 is answered in favour of the assessee and against the revenue. The assessing authority is directed to

delete the additions made in a sum of Rs.7,58,955/- to the return of income filed by the assessee and issue a fresh demand notice.

iii) In so far as issue Nos.(ii), (iii) and (iv) are concerned, the same are answered against the assessee and in favour of the revenue.

iv) In so far as S.T.Rev.No.192 of 2004 is concerned, all the issues are answered against the assessee and in favour of the revenue.

(v) In O.T.C.No.3 of 2006 for the assessment year 1993-94 both the issues are answered against the assessee and in favour of the revenue.

(vi) In so far as S.T.Rev.No.139 of 2004 for the assessment year 1995-96 is concerned, the issue raised is answered against the assessee and in favour of the revenue.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.